

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARLIN GIOVANNI PICKENS,

Plaintiff,

v.

JONATHAN MCNEELY, *et al.*,

Defendants.

CASE NO. 3:22-cv-05562-DGE

ORDER TO SHOW CAUSE

This matter is before the Court on referral from the district court and on plaintiff's motion to proceed *in forma pauperis* ("IFP"). *See* Dkt. 1.

Plaintiff proceeds *pro se* and his proposed complaint is subject to screening by the Court under 28 U.S.C. § 1915(e)(2). Plaintiff's proposed complaint contains the same claims that another district court dismissed without prejudice in another matter recently filed by plaintiff. It does not appear that plaintiff has cured any of the deficiencies that the court previously identified with these claims. Accordingly, plaintiff is ordered to show cause why the Court should not recommend dismissal of this matter.

BACKGROUND

Plaintiff, who proceeds *pro se*, seeks to proceed IFP to bring suit against “Doe” defendants from “911 dispatch” and the Federal Bureau of Investigations, as well as Jonathan McNeely from the “State (of WA) and Local Police Department – Tacoma Police Headquarters.” Dkt. 1-1 at 6. The claims against these defendants are brought solely in their official capacities. *See id.* Plaintiff’s proposed complaint is difficult to follow due to its repetitiveness, verbosity, and inclusion of irrelevant content, but it appears to allege that the named defendants failed to protect him from unlawful conduct committed by hospital staff. *See* Dkt. 1-1 at 18–20. However, those are the same claims against the same defendants that plaintiff tried to raise in another matter. *See* Cause No. 3:22-cv-5318-BHS; *see also Harris v. Cty. of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012) (“We may take judicial notice of . . . documents on file in federal or state courts.” (citation omitted)). In that matter, Magistrate Judge Theresa L. Fricke screened plaintiff’s proposed complaint and recommended that the district court dismiss plaintiff’s claims without prejudice, which the district court adopted. *See* Cause No. 3:22-cv-5318-BHS, Dkts. 1, 5–8.

DISCUSSION

Where a plaintiff seeks to proceed IFP, the Court is authorized to review the proposed complaint to determine whether it is frivolous or malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2)(B).

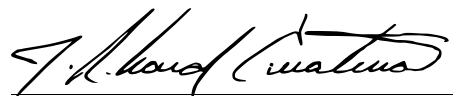
Here, plaintiff’s proposed complaint is duplicative of claims a district court previously screened and dismissed in another matter. *See* 3:22-cv-5318-BHS, Dkts. 7, 8. Although the claims were dismissed without prejudice, which allowed plaintiff to pursue them at a later time,

1 plaintiff appears to have presented the same deficient claims in this proposed complaint without
2 addressing the deficiencies Judge Fricke identified. *Compare* Dkt. 1-1 with Cause 3:22-cv-5318-
3 BHS, Dkt. 6. Thus, the Court is inclined to recommend that the District Court dismiss plaintiff's
4 action as frivolous and for failing to state claim upon which relief can be granted. However, the
5 Court will give plaintiff an opportunity to explain how these claims differ from the claims
6 previously screened and dismissed in 3:22-cv-5318-BHS.

7 CONCLUSION

8 The Court orders plaintiff to show cause why this matter should not be dismissed.
9 Plaintiff must explain how the claims in his proposed complaint differ from the claims he
10 attempted to bring in Cause 3:22-cv-5318-BHS. Specifically, plaintiff should address how he has
11 cured the deficiencies Judge Fricke identified with his claims. Plaintiff's response is due no later
12 than **September 30, 2022**. The Court declines to rule on plaintiff's IFP motion until he satisfies
13 the Court's order to show cause. Thus, the Clerk is directed to renote plaintiff's IFP motion to
14 September 30, 2022.

15 Dated this 30th day of August, 2022.

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17 J. Richard Creatura
18 Chief United States Magistrate Judge
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